



FREDERICK COUNTY PLANNING COMMISSION
May 11, 2016

TITLE: **Urban Green: APFO Letter of Understanding (LOU) Amendment**

FILE NUMBER: **SP-12-11 (AP# 13559)**

REQUEST: **Letter of Understanding (LOU) Amendment**
Requesting an amendment to the approved Letter of Understanding, conditionally approved August 14, 2013

PROJECT INFORMATION:

LOCATION: Located on the west side of Urbana Pike, just south of MD 80

ZONE: Village Center (VC)

REGION: Urbana

WATER/SEWER: W-5, S-5

APPLICANT/REPRESENTATIVES: (as applicable)

OWNER/APPLICANT: Matan Acquisitions, Inc

ENGINEER: N/A

ATTORNEY: Rand D. Weinberg, Esq.

STAFF: Ron Burns, Traffic Engineer

RECOMMENDATION: Approval

Enclosures:

Exhibit #1 – Original LOU, conditionally approved on August 14, 2016
Exhibit #2 – Proposed Amendment to the LOU

STAFF REPORT

BACKGROUND

Matan Acquisitions, Inc. received APFO conditional approval from the planning commission on August 13, 2013 and received an executed a Letter of Understanding (LOU) on September 15, 2013. See Exhibit 1. The LOU sets forth the off-site APFO requirements (as well as some site frontage requirements) as identified in the traffic impact analyses (TIA) by The Traffic Group dated May 8 and July 2, 2013. All improvements required in the LOU have been satisfied to date, including road escrow account contributions totaling \$281,392 and an off-site sidewalk connection to the existing MD 80 sidewalk network, except:

1. Implementation of signal and marking adjustments at the MD 80/Urbana Pike intersection (modifying the two lane northbound approach from a left and thru/right to a left and left/thru/right, as detailed in item 'a' on page 6 of the existing LOU
2. Construction of "some parallel parking" along Urbana Pike frontage (not APFO related) as mentioned in item 'b' on page 6

The LOU requires both of these improvements to be implemented prior to issuance of any certificate of occupancy.

ANALYSIS

The purpose of this LOU Amendment (Exhibit #2) is: 1) to permit the developer to receive certificates of occupancy for apartment units for June 1 occupancies, in the event the signal/marking improvements are not complete by then, and 2) clean up the LOU to remove the reference to parallel parking that was deemed unreasonable to construct during the detailed improvement plan process.

The signal/marking improvement at MD 80/Urbana Pike is guaranteed and permitted by SHA, and a contractor is on board to make the improvement. The improvement was complicated by SHA's justifiable addition to require a new pedestrian signal phase be added to accommodate pedestrians using the new sidewalk who want to cross MD 80. Under ambient traffic conditions, the improvement is not required to meet adequacy, but it would be needed in the next 5 to 15 years as Urbana area traffic levels increase.

While the developer anticipates that it is likely that the MD 80/Urbana Pike improvements will be in place by June 1, they asked that the LOU be amended to require the improvements to be in place by July 15, providing a much safer cushion that would avoid complications, to both the developer and future residents, of not having occupancy permits for residents to occupy apartments on June 1. Because this delay in implementation of the improvements would not put the new residents at a health, safety or welfare risk, nor conflict with the intent of APFO findings, staff has no objection to this modification.

Regarding the elimination of parallel parking, first and foremost, it would be difficult to provide given the frequency of driveways and some drainage issues. At most only one space could have been provided. Therefore, both the approved site and improvement plans do not show any spaces. Finally, this requirement is not APFO related and probably should not have been included in the LOU to begin with.

RECOMMENDATION

Staff finds that this amendment meets the intent of the original LOU, the APFO and its Guidelines, and has no loss of safety or welfare to the new residents about to occupy the apartments.

Staff recommends approval of the Amendment of the LOU, subject to no additional conditions.

PLANNING COMMISSION ACTION

MOTION TO APPROVE

I move that the Planning Commission **APPROVE** the Consent Agenda.



**FREDERICK COUNTY GOVERNMENT
DIVISION OF COMMUNITY DEVELOPMENT**

Eric E. Soter, Division Director

*Planning & Development Review Department
Jim Gugel, Planning Director*

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ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING

Urban Green

Site Plan #SP 12-11 AP #13559

In General: The following Letter of Understanding ("**Letter**") between the Frederick County Planning Commission ("**Commission**") and Matan Acquisitions, Inc. (the "**Developer**"), together with its/their successors and assigns, sets forth the conditions and terms which the Commission deems to be the minimum necessary improvements dealing with school, water, sewer, and road improvements that must be in place for the property identified below to be developed, as proposed under the Urban Green Site Plan (the "**Project**"), in compliance with the Frederick County Adequate Public Facilities Ordinance ("**APFO**").

The Developer, its successors and assigns, hereby agrees and understands that unless the required improvements (or contributions to road escrow accounts, as specified below) are provided in accordance with this Letter, APFO requirements will not be satisfied and development will not be permitted to proceed.

This Letter concerns itself with the Developer's 22.95 +/- acre parcel of land, which is zoned Mixed Use (MX) and Village Center (VC), and located on the west side of Urbana Pike, between MD 80 and MD 355 (Worthington Blvd.), with access on Urbana Pike. This APFO approval will be for the development of 352 apartment rental units and 12,000 sq. ft. of commercial space/use, which is shown on the site plan for the above-referenced Project, which was conditionally approved by the Commission on August 14, 2013.

Schools: The Project is projected to generate 18 elementary school students, 8 middle school students and 25 high school students. Based on these numbers and considering enrollment projections from pipeline development, the school adequacy test fails at the elementary, middle and high school levels.

At the middle school level, the current enrollment is at 124% of existing capacity at Urbana Middle School and therefore the School Construction Fee Option would normally not be allowable. However, §1-20-62(K) allows "actual capacity expected to be provided by new schools and school additions scheduled for construction in the first

2 years of the County Capital Improvement Program ("CIP") to be considered in determining the enrollment percentage.

The Board of County Commissioners adopted the current CIP (FY 2014-2019) with a capacity expansion project for the Urbana Middle School ("the UMS Fitout Project") within the first two years of the CIP (FY 15). Therefore, the UMS Fitout and its capacity may be considered in determining eligibility for the School Construction Fee Option. However, the CIP was adopted contingent on the Developer's contribution of a total of \$1.6 million toward the funding of the UMS Fitout Project (the "CIP Contribution"). Therefore, that obligation is also being memorialized as part of this LOU to ensure timely payment of the Developer's contribution as part of the CIP and to confirm funding of the UMS Fitout Project. To that end, the Developer shall pay the CIP Contribution to the County as a single lump sum payment in the amount of \$1.6 million dollars upon the earlier of:

- A. The application for the first residential building permit, or
- B. July 1, 2014, provided the Applicant could have obtained the first residential permit by July 1, 2014 with reasonably diligent effort.

The Developer must mitigate the inadequacies at all three school levels. The Developer has chosen the option to mitigate the school inadequacy by paying the School Construction Fees under §1-20-62 of the APFO. This Project is eligible to utilize the School Construction Fee option per the criteria set forth in § 1-20-62 and as described above. The School Construction Fees shall be paid at plat recordation (or at building permits for multi-family dwellings without subdivision) based on the specific fees required by §1-20-62(E) at the time of plat recordation (or building permit issuance), per unit type and the school level(s) to be mitigated. The \$1.6 million dollar CIP Contribution shall include the portion of the School Construction Fee attributable to the middle school; the portion of the School Construction Fee attributable to the high school and elementary school shall be paid in addition to the CIP Contribution. The Developer shall be entitled to an offset against the Development Impact Fee, if the Developer meets the requirements of Chapter 1-22 of the Frederick County Code, up to the amount of the CIP Contribution.

Water and Sewer: The Property has a water and sewer classification of W-5 (Dev.), S-5 (Dev.). The Division of Utilities and Solid Waste Management (DUSWM) has provided a finding of conditional approval regarding sewer and water facilities to serve this project based on a sewer study prepared by Harris, Smariga & Associates, Inc. dated June 10, 2013.

- A. Water: The proposed water system to serve the Property will consist of a network of both a public water main and private service connection shown on the approved Final Site Plan. Developer will construct an 8" public water line within Urbana Pike right of way from its current terminus west of the Property near Maryland Route 80 to the proposed entrance to the site.

- B. Sewer: Developer shall be responsible for upgrading the following existing 8" sewer lines to 10" diameter lines between the following existing offsite Manholes: 1 to 46 (County Contract 208H-SW) and 46 to 13 (County Contract 208B-SW).

While the public sewer and water facilities are currently adequate to serve the project, the applicant recognizes that capacity is not guaranteed until purchased. APFO approval for sewer and water does not guarantee that plats will be recorded and building permits will be issued. Plat recordation and building permit issuance are subject to compliance with the Annotated Code of Maryland, Environment Article Section 9-512, et. seq and all applicable county regulations, including but not limited to Sec. 1-16-106 of the Frederick County Subdivision Regulations.

Road Improvements: As proposed in the traffic impact analysis (TIA) performed by The Traffic Group, Inc, dated May 8, 2013 and revised on July 2, 2013, the Project will generate 219 am and 252 pm ^{new} weekday peak hour trips* and is required to mitigate all road improvements that do not satisfy level of service standards per §1-20-31. The Developer is also required to provide fair share contributions to existing escrow accounts per §1-20-12(H).

In full satisfaction of APFO requirements to mitigate site-generated trips, the Developer shall pay into new and existing County-held escrow accounts, inside the scoped study area, the following pro rata contributions:

1. Worthington Boulevard (MD 355) Relocated - South of MD 80. Contribute the appropriate pro-rata share (0.43 % of \$3,024,791) to Existing Escrow Account No. 3232 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$13,007
2. MD 355/Campus Drive: Second northbound through lane. Contribute the appropriate pro-rata share (7.37% of \$362,322) to Existing Escrow Account No. 3248 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$26,703
3. MD 355/Campus Drive: Signal. Contribute the appropriate pro-rata share (6.98% of \$250,000) to Existing Escrow Account No. 3801 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$17,450
4. MD 80/I-270 Southbound Ramps: Additional northbound right turn approach lane at the terminus of the southbound off-ramp and modify the southbound on-ramp to provide two (2) lanes, narrowing to one lane at its merge with the I-270 mainline, extending the I-270 acceleration lane. Contribute the appropriate pro-rata share (5.68% of \$200,000) to Existing Escrow Account No. 3920 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$11,360
5. MD 80/I-270 Northbound Ramps: Restripe/reconstruct to provide an additional westbound through lane. Contribute the appropriate pro-rata share (1.27% of \$100,000) to Existing Escrow Account No. 3921 for improvement of this

* New, not driveway - includes bypass reduction

intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$1,270

6. I-270/MD 80 Interchange: Add northbound to eastbound directional ramp. Contribute the appropriate pro-rata share (1.27% of \$2,000,000) to Existing Escrow Account No. 3579 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$25,400
7. MD 80/Sugarloaf Parkway Roundabout: Add additional eastbound and westbound approach lanes. Contribute the appropriate pro-rata share (3.85% of \$200,000) to Existing Escrow Account No. 3922 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$7,700
8. MD 80/Campus Drive: Restripe the eastbound right turn lane to provide an eastbound through lane and right turn lane and construct the receiving lane as an auxiliary lane turning into the right turn lane into Pontius Court. Contribute the appropriate pro-rata share (2.82% of \$110,000) to Existing Escrow Account No. 3249 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$3,102
9. MD 355/Urbana Pike: Signal. Contribute the appropriate pro-rata share (2.06% of \$250,000) to a New Escrow Account for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$5,150.

- Note: Should a secondary access with Urbana Parkway not be accomplished at the time of building permit submission for the first apartment building, additional site traffic would be distributed through this intersection resulting in a total contribution of \$15,725 (6.29% of \$250,000) or a **net additional payment of \$10,575 to be paid prior to the issuance of the first apartment building permit.**

10. MD 355/Dr. Perry Road/Big Woods Road: Signal. Contribute the appropriate pro-rata share (10.84% of \$250,000) to Existing Escrow Account No. 3931 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$27,100

In satisfaction of APFO requirements to provide fair share contributions to existing escrow accounts per §1-20-12(H), the Developer shall pay into County-held escrow accounts, outside of the scoped study area, the following pro rata contributions:

- A. MD 80/Ijamsville Road Intersection. Contribute the appropriate pro-rata share (3.17% of \$50,000) to Existing Escrow Account No. 3383 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$1,585
- B. MD 355/MD Route 75: Signal. Contribute the appropriate pro-rata share (9.03% of \$175,000) to Existing Escrow Account No. 3847 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$15,803

- C. MD 355/Fire Tower Road: Intersection improvements. Contribute the appropriate pro-rata share (6.30% of \$401,969) to Existing Escrow Account No. 3288 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$25,324.
- D. MD 80/Carriage Hill Drive: Add additional westbound through lane, providing a replacement westbound right turn lane. Contribute the appropriate pro-rata share (1.87% of \$200,000) to Existing Escrow Account No. 3892 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$3,740.
- E. MD 80/Pontius Court: Provide a second eastbound receiving lane and a replacement eastbound right turn lane. Contribute the appropriate pro-rata share (2.40% of \$300,000) to Existing Escrow Account No. 3923 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$7,212.
- F. MD 80/Carriage Hill Drive: Add additional eastbound through lane, providing a replacement westbound right turn lane. Contribute the appropriate pro-rata share (1.20% of \$300,000) to Existing Escrow Account No. 3924 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$3,600.
- G. MD 80/Carriage Hill Drive: Signal. Contribute the appropriate pro-rata share (4.17% of \$175,000) to Existing Escrow Account No. 3925 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$7,298.
- H. MD 80/Royal Crest Drive: Restripe the westbound right turn lane at the intersection to provide a through/right turn lane, extending the receiving lane as required by SHA. Contribute the appropriate pro-rata share (1.24% of \$200,000) to Existing Escrow Account No. 3926 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$2,480.
- I. MD 80/Royal Crest Drive: Signal. Contribute the appropriate pro-rata share (1.79% of \$175,000) to Existing Escrow Account No. 3927 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$3,133.
- J. MD 355 from Urbana Regional Park to north of Park Mills Road: Widen to a four (4) lane divided highway. Contribute the appropriate pro-rata share (1.03% of \$6,000,000) to Existing Escrow Account No. 3928 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$61,800.
- K. MD 355/Park Mills Road: Signal. Contribute the appropriate pro-rata share (3.87% of \$250,000) to Existing Escrow Account No. 3929 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$9,675.
- L. MD 355/Sugarloaf Parkway Roundabout: Restripe the eastbound to provide a left turn lane and a left/through/right turn lane and provide a northbound right turn lane. Contribute the appropriate pro-rata share (1.00% of \$150,000) to

Existing Escrow Account No. 3930 for improvement of this intersection by others. As determined by the County Traffic Engineer, pro-rata contribution to this road improvement is \$1,500

Therefore, prior to building permit issuance, the Developer hereby agrees to pay \$281,392 to the escrow accounts described above for these Road Improvements. Should these payments not be made within one year of the execution of this Letter, the County reserves the right to adjust this amount, based on an engineering cost index.

The Developer also agrees to guarantee or cause to be guaranteed, prior to the issuance of any building permits, and assure completion prior to the issuance of any certificates of occupancy, subject to the provisions below, the following improvements:

Escrow 4049
a. Restripe the northbound approach at the MD 80/Urbana Pike intersection to provide a left turn lane and a left/through/right lane and the retiming of the traffic signal to provide split phasing; or (ii) construct or cause to construct a comparable improvement as otherwise determined by the County and SHA, all to be completed within existing right-of-way. *plus, per SHA, crosswalk on MD 80 & ped phase*

b. Reconstruct the west frontage side of Urbana Pike to provide a continuous sidewalk and some parallel parking from MD 80 to the southern site access property limit (the "Frontage Improvement"), as identified in the Project's Improvement Plan. For that portion of the Frontage Improvement where right-of-way is not controlled by the Developer, the Developer shall exercise commercially reasonable efforts to secure such right-of-way without the assistance of the County. In the event that the Developer has demonstrated to the County that it is unable to secure any or all of such public right-of-way despite its commercially reasonable efforts to do so in a timely manner consistent with the construction of public infrastructure improvements, the Developer may request the County to assist in the acquisition of the needed right-of-way at the Developer's sole cost and expense. If the County approves the Developer's request, then the County shall acquire the needed right-of-way. Should the County decide not to acquire the right-of-way, then the Developer shall be permitted to make a contribution to the County equal to the total anticipated construction cost for the Frontage Improvement where portions of the right-of-way are not controlled by the Developer, which shall include, but not be limited to, costs for design, engineering, right-of-way acquisition, management, construction, inspection, etc. in lieu of constructing the remaining Frontage Improvement. Upon the Developer delivering to the County the payment described above, the Developer shall thereafter be permitted to obtain all building permits and Certificates of Occupancy, as long as all other requirements for building permits and certificates of occupancy are satisfied.

An escrow account for the off-site improvements beyond the current frontage shall be established for contributions by others, and if the Developer constructs portions of the Frontage Improvement where right-of-way is not controlled by the Developer, the County shall remit proportionate funds to the Developer from said escrow account, upon payments into said escrow account by others.

Nothing herein shall be deemed to compel the County to acquire right-of-way; likewise, nothing herein shall be deemed to require the Developer to delay or cease progress of the development of the Project in the event that the Developer is unable to secure the necessary right-of-way for the Frontage Improvement as described above or in the event that the County declines to acquire the necessary right-of-way for the Frontage Improvement as described above. For any work done by the Developer on the Frontage Improvement as described above, Developer may work around any existing utilities, and in no event shall Developer be required to relocate existing utilities.

Period of Validity: The APFO approval is valid for three (3) years from the date of Commission approval; therefore, the APFO approval expires on August 14, 2016.

Disclaimer: This Letter pertains to APFO approval only, and shall not be construed to provide any express or implied rights to continue the development process. The Project remains subject to all applicable rules and regulations, including but not limited to those related to zoning, water and sewer, and subdivision. The Planning Commission's jurisdiction and authority is limited by State and County law, and approvals may be required from other local or state governmental agencies before the proposed development can proceed.

[Signatures on next page]

MATAN ACQUISITIONS, INC:

By: 

Mark C. Matan
President

9-4-13

Date:

FREDERICK COUNTY PLANNING COMMISSION:

By: 

Dwaine E. Robbins, Chair or William G. Hall, Secretary
Robert J. Lawrence

9/13/13

Date:

ATTEST:

By: 

Gary Hessong, Director, Permits & Inspections

9/15/13

Date:

Planner's Initials / Date



9/11/13

County Attorney's Office Initials / Date
(Approved as to legal form)



9/13/13

Exhibit #2

FIRST AMENDMENT TO ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING URBAN GREEN

This First Amendment to Adequate Public Facilities Letter of Understanding ("First Amendment"), between the Frederick County Planning Commission ("Commission") and Matan Acquisitions, Inc. ("Developer"), is made this 11th day of May 2016, by and between the Commission and Developer.

Explanatory Note: The original Adequate Public Facilities Letter of Understanding for Urban Green, Site Plan #SP 12-11, AP #13559, dated September 15, 2013 ("Original Letter"), contains certain provisions concerning the timing of two specific identified road improvements, and sets forth the timing of bonding and completion of such improvements. The Original Letter is being amended by this First Amendment to revise the deadline for completion of these identified improvements, and also to eliminate the requirement for parallel parking spaces, which have been deemed infeasible and unnecessary due to conditions found in the field during design. Therefore, the Original Letter is hereby amended as follows:

I. The paragraph under the heading "Road Improvements," which is located immediately prior to subparagraphs "a." and "b.," and which paragraph begins as follows: "The Developer also agrees to guarantee or cause to be guaranteed..." is hereby rewritten as follows:

"The Developer also agrees to guarantee or cause to be guaranteed, prior to the issuance of any building permits, and assure completion prior to July 15, 2016, subject to the provisions below, the following improvements:"

II. The first sentence of subparagraph "b." which succeeds the paragraph referenced immediately above, and which starts "Reconstruct the west frontage side of Urbana Pike to provide a continuous sidewalk..." is hereby rewritten as follows:

"Reconstruct the west frontage side of Urbana Pike to provide a continuous sidewalk from MD 80 to the southern site access property limit (the "Frontage Improvement"), as identified in the Project's Improvement Plan."

The APFO approval is valid for three (3) years from the date of Commission approval; therefore, the APFO approval expires on August 14, 2016.

Except as specifically modified by this First Amendment, the Original Letter shall remain unchanged and in full force and effect.

[Signatures next page]

MATAN ACQUISITIONS, INC:

By: 

Name: Mark C. Matan, President

Date: 5/4/2016

FREDERICK COUNTY PLANNING COMMISSION:

By: _____ Date: _____
William Hopwood, Chair or Robert White, Secretary

ATTEST:

By: _____ Date: _____
Gary Hessong, Director, Department of Permits & Inspections

Planner's Initials / Date _____

County Attorney's Office Initials / Date _____
(Approved as to legal form)